

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
BT GROUP PLC and INFONET)
TELECOMMUNICATIONS CORPORATION)
For Approval to Transfer Control of)
Infonet Telecommunications)
Corporation to BT Group plc.)
_____)

DOCKET NO. 04-0345

DECISION AND ORDER NO. 21557

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

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DECISION AND ORDER

By this decision and order, the commission waives the requirements of Hawaii Revised Statutes ("HRS") § 269-7(a) and Hawaii Administrative Rules ("HAR") chapter 6-61, to the extent applicable, with respect to the proposed transfer of control of INFONET TELECOMMUNICATIONS CORPORATION ("ITC") to BT GROUP PLC ("BT Group") ("Proposed Indirect Transfer of Control"), subject to certain conditions set forth herein.

I.

Introduction

BT Group and ITC (collectively, "Applicants") jointly request the consent of the commission of the Proposed Indirect Transfer of Control.¹ Applicants make their request pursuant to HRS § 269-7.

¹Applicants' application, filed on November 26, 2004, For Approval to Transfer Control of Infonet Telecommunications Corporation to BT Group plc ("Application").

Applicants served the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") a copy of the Application. The Consumer Advocate, by its Statement of Position, filed on January 6, 2005, states that it does not object to the approval of the Proposed Indirect Transfer of Control, described above, subject to certain qualifications, discussed below.

II.

Background

A.

Description of Applicants and Related Entities

BT Group is a widely-held public corporation and holding company for an integrated group of businesses that provide information and communications technology services to large, multinational corporate customers throughout the world. All of the businesses and assets of BT Group are held by a subsidiary of BT Group, British Telecommunications plc ("BT") and BT's various subsidiaries. BT Communications Sales LLC ("BT Communications") is the subsidiary that holds a certificate of authority ("COA") to provide intrastate telecommunications services as a reseller in the State of Hawaii ("State").²

²In support of BT Communications' authority to provide intrastate telecommunications services in Hawaii as a reseller, Applicants cited to Docket No. 99-0070. However, as alluded to by the Consumer Advocate, the commission granted a COA in Docket No. 99-0070 to Concert Communications Sales LLC ("Concert") rather than BT Communications. Decision and Order No. 17372, filed on November 9, 1999, in Docket No. 99-0070. Subsequently, on March 31, 2000, the commission authorized the transfer of the sole

ITC, a Delaware corporation, also holds a COA to provide intrastate telecommunications services within the State as a reseller.³ ITC is a subsidiary of Infonet, a leading provider of value added global services for nearly 3,000 multinational organizations.

B.

Description of Proposed Indirect Transfer of Control

On November 8, 2004, BT, on behalf of BT Group, and Infonet, the corporate parent of ITC, entered into an agreement and plan of merger pursuant to which BT has agreed to acquire all of the outstanding shares of capital stock of Infonet in exchange for \$2.06 cash per share. To effectuate the transaction, a newly created, wholly-owned subsidiary of BT Group, Blue Acquisition Corp., will be merged with Infonet, after which the separate corporate existence of Blue Acquisition Corp. shall cease and Infonet will emerge as the surviving corporation. Thus, as result of the proposed transaction, Applicants represent that ITC will continue to be wholly-owned by Infonet, but Infonet will become an indirect wholly-owned subsidiary of BT Group. Applicants represent, among other things, that the Proposed Indirect Transfer

indirect control of Concert to BT. Decision and Order No. 17650, filed on March 31, 2000, in Docket No. 99-0351. On March 6, 2003, however, the commission was notified that Concert's name would be changed to BT Communications, effective March 7, 2003.

³Decision and Order No. 21346, filed on September 14, 2004, in Docket No. 04-0132.

of Control (1) will better serve its multinational customers globally, and (2) will generate efficiencies that will be of benefit to customers generally by reason of the highly competitive nature of the market.

C.

Consumer Advocate's Position

In its January 6, 2005 Statement of Position, the Consumer Advocate states, in relevant part, the following:

Based upon the present available facts, BT will not control a dominant share of Hawaii's telecommunications market through its subsidiaries if the [c]ommission approves the relief requested in the instant proceeding. In addition, the Consumer Advocate recognizes that the entry of many telecommunications service providers in the Hawaii market will serve to mitigate any traditional public utility regulatory concerns that may result from the [Proposed Indirect Transfer of Control] affecting BT Group and ITC. Therefore, if there are any adverse consequences from the [Proposed Indirect Transfer of Control], consumers in Hawaii will have the option of selecting another service provider.⁴

Based on the above, the Consumer Advocate states that it does not object to Applicants' Proposed Indirect Transfer of Control, provided the following documents are submitted to the commission and the Consumer Advocate within thirty (30) days from the date of this decision and order:

1. Copies of stock purchase agreement between BT and Infonet; and

⁴Consumer Advocate's Statement of Position at 3.

2. Copies of the plan of merger between Blue Acquisition Corp. and Infonet.

III.

Discussion

HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Thus, the commission has jurisdiction to review the proposed financial transactions of the parent entity of a regulated public utility under HRS § 269-7(a). Under this section, the commission will approve the proposed financial transaction if it is reasonable and consistent with the public interest.⁵

HRS § 269-16.9(e) also permits us to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public interest regulation. Similarly, HAR § 6-80-135 permits us to waive the applicability of any of the provisions of HRS chapter 269 or any rule (except provisions of HRS § 269-34 or provisions of HAR chapter 6-80 that implement HRS § 269-34), upon a determination that a waiver is in the public interest.

⁵See, Decision and Order No. 19874, filed on December 13, 2002, in Docket No. 02-0345.

Upon review of the record⁶ in this docket, we find the following: (1) that much of the telecommunications services currently provided by BT Communications and ITC are competitive; (2) that BT Communications and ITC are non-dominant carriers in Hawaii; (3) that the Proposed Indirect Transfer of Control is consistent with the public interest; and (4) that competition, in this instance, will serve the same purpose as public interest regulation.

Based on the foregoing, the commission finds and concludes that the requirements of HRS § 269-7(a) should be waived, to the extent applicable, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.⁷ Similarly, we also find it in the public interest to waive, on our own motion, the applicability of rules set forth in HAR chapter 6-61 to the extent that the Application in this docket is not in compliance with those rules. Thus, for purposes of considering this Application, we will not require the information and/or documents (i.e., written verification) normally required upon the filing of such Application. The commission, nonetheless, reminds Applicants that all future applications should comply with our applicable rules. For example, all applications and other

⁶The commission also takes official notice, pursuant to HAR § 6-61-48, of any other commission records relating to BT Communications and ITC.

⁷At the same time, the commission will continue to examine a utility's application on a case-by-case basis to determine whether the applicable requirements of HRS § 269-7(a) or any other related provision governing utility transactions, should be waived. The commission's waiver in this decision and order shall not be construed by any utility as a basis for not filing an application involving similar transactions or circumstances.

pleadings that initiate a proceeding before the commission must be verified in accordance with HAR § 6-61-17.

Notwithstanding our findings and conclusions above, we also find the Consumer Advocate's recommendations to be reasonable, and, therefore, we will adopt its recommendations by requiring Applicants to submit copies of the stock purchase agreement between BT and Infonet, and the plan of merger between Blue Acquisition Corp. and Infonet to the commission and the Consumer Advocate within thirty (30) days of the date of this decision and order.

IV.

Orders

THE COMMISSION ORDERS:

1. The requirements of HRS § 269-7(a), to the extent applicable, are waived with respect to the Proposed Indirect Transfer of Control, subject to the applicable filing conditions described in Ordering Paragraph 3 below.

2. To the extent that the Application does not contain all of the information required under the rules set forth in HAR chapter 6-61, the applicability of those sections is waived, subject to the applicable filing conditions described in Ordering Paragraph 3 below.

3. Within thirty (30) days of the date of this decision and order, Applicants shall submit to the commission and the Consumer Advocate the following:

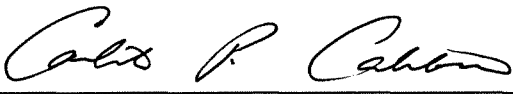
- a. Copies of the stock purchase agreement between BT and Infonet; and


b. Copies of the plan of merger between
Blue Acquisition Corp. and Infonet.


4. Applicants shall conform to all of the commission's
orders set forth above. Failure to adhere to the commission's
orders shall constitute cause to void this decision and order, and
may result in further regulatory actions, as authorized by law.

DONE at Honolulu, Hawaii JAN 24 2005.

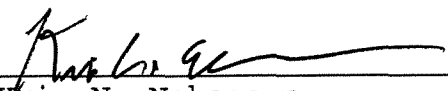
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kris N. Nakagawa
Commission Counsel

04-0345.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21557 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: JAN 24 2005